

# CALIFORNIA INSTITUTE OF TECHNOLOGY

## JET PROPULSION LABORATORY

### GENERAL PROVISIONS PART II -

### LABOR-HOUR/TIME-AND-MATERIAL CONTRACT

GENERAL PROVISION NUMBER AND TITLE	PAGE
GP-61. Inspection.....	46
GP-62. Changes .....	47
GP-63. Subcontracts .....	48
GP-64. Government Property.....	48
GP-65. Timekeeping and Payments .....	49
GP-66. Insurance and Indemnification.....	51
GP-67. Compliance with the Americans with Disabilities Act.....	52
GP-68. Selection of Personnel.....	53
GP-69. Termination .....	53
GP-70. Limitation on Withholding of Payments .....	55
GP-71. Federal, State, and Local Taxes.....	56
GP-72. Removal or Replacement of Personnel .....	56
GP-73. (RESERVED)	
GP-74. (RESERVED)	
GP-75. Excusable Delays .....	56
GP-76. Equipment (Excluding Vehicles), Tools and Material (Contractor Personnel in Residence at JPL) ....	56
GP-77. Felony Conviction Information (Contractor Personnel in Residence at JPL) .....	57
GP-78. (RESERVED)	
GP-79. (RESERVED)	
GP-80. (RESERVED)	

***GENERAL PROVISIONS CANNOT BE ALTERED WITHOUT NASA APPROVAL***

The attached Exhibits are incorporated into the General Provisions:

Exhibit E. (Reserved)

Exhibit F. Contractor Personnel Access Report (Form JPL 1943)

Exhibit G. Minimum Timekeeping Requirements for Time-and-Material or Labor-Hour Type Procurements to be Performed at Off-Lab Facilities (Form JPL 1725)

## ARTICLE GP-61. INSPECTION

### (a) Definitions.

- (1) "Contractor's managerial personnel," as used in this Article, means any of the Contractor's directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of:

- (A) All or substantially all of the Contractor's business;

- (B) All or substantially all of the Contractor's operation at any one plant or separate location at which the Contract is being performed; or

- (C) A separate and complete major industrial operation connected with the performance of this Contract.

- (2) "Materials," as used in this Article, includes data when the Contract does not include the Warranty of Data clause.

- (b) The Contractor shall provide and maintain an inspection system acceptable to JPL covering the material, fabricating methods, work, and services under this Contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to JPL during Contract performance and for as long afterwards as the Contract requires.

- (c) JPL has the right to inspect and test all materials furnished and services performed under this Contract, to the extent practicable at all places and times, including the period of performance, and in any event before acceptance. JPL, through any authorized representative, may also inspect the plant or plants of the Contractor or any subcontractor engaged in Contract performance. JPL shall perform inspections and tests in a manner that will not unduly delay the work.

- (d) If JPL performs inspection or test on the premises of the Contractor or a subcontractor, the Contractor shall furnish and shall require subcontractors to furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.

- (e) Unless otherwise specified in the Contract, JPL shall accept or reject services and materials at the place of delivery as promptly as practicable after delivery, and they shall be presumed accepted 60 days after the date of delivery, unless accepted earlier.

- (f) At any time during Contract performance, but not later than six months (or such other time as may be specified in the Schedule) after acceptance of the services or materials last delivered under this Contract, JPL may require the Contractor to replace or correct services or materials that at time of delivery failed to meet Contract requirements. Except as otherwise specified in paragraph (h) below, the cost of replacement or correction shall be determined under the "Timekeeping and Payments" Article of this Contract, but the "hourly rate" for labor hours incurred in the replacement or correction shall be reduced to exclude that portion of the rate attributable to profit. The Contractor shall not tender for acceptance materials and services required to be replaced or corrected without disclosing the former requirement for replacement or correction, and, when required, shall disclose the corrective action taken.

- (g) If the Contractor fails to proceed with reasonable promptness to perform required replacement or correction, and if the replacement or correction can be performed within the ceiling price (or ceiling price as increased by JPL), JPL may:

- (1) By contract or otherwise, perform the replacement or correction, charge to the Contractor any increased cost, or deduct such increased cost from any amounts paid or due under this Contract (or require repayment of any payments theretofore made); or

- (2) Terminate this Contract for default.

- (h) Notwithstanding paragraphs (f) and (g) above, JPL may at any time require the Contractor to remedy by correction or replacement, without cost to the Institute, any failure by the Contractor to comply with the requirements of this Contract, if the failure is due to (i) fraud, lack of good faith, or willful misconduct on the part of the Contractor's managerial personnel or (ii) the conduct of one or more of the Contractor's employees selected or retained by the Contractor after any of the Contractor's managerial personnel has reasonable grounds to believe that the employee is habitually careless or unqualified.
- (i) This Article applies in the same manner and to the same extent to corrected or replacement materials or services as to materials and services originally delivered under this Contract.
- (j) The Contractor has no obligation or liability under this Contract to correct or replace materials and services that at time of delivery do not meet Contract requirements, except as provided in this Article or as may be otherwise specified in the Contract.
- (k) Unless otherwise specified in the Schedule, the Contractor's obligation to correct or replace Government-furnished property shall be governed by the Article entitled "Government Property." (l) If this Contract, including those documents forming a part hereof by reference or incorporation, provides for or requires the submission of any of the work to JPL for approval, any such approval given by JPL, prior to final acceptance, shall not relieve the Contractor of its responsibility for complying with the specifications and other provisions of this Contract. Any such approval shall not be construed as an assumption by JPL of the responsibility that such work complies or will comply with the specifications or other provisions of this Contract.
- (m) The Government has the right to inspect and evaluate the work performed or being performed under the Contract, and the premises where the work is being performed, at all reasonable times and in a manner that will not unduly delay the work. If the Government performs inspection or evaluation on the premises of the Contractor or a subcontractor, the Contractor shall furnish and shall require subcontractors to furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.

#### ARTICLE GP-62. CHANGES

- (a) JPL may at any time, by written unilateral modification, and without notice to the sureties, if any, make changes or issue directions within the general scope of this Contract in any one or more of the following:
  - (1) Description of services to be performed.
  - (2) Time of performance (i.e., hours of the day, days of the week, etc.).
  - (3) Place of performance of the services.
  - (4) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for JPL in accordance with the drawings, designs, or specifications.
  - (5) Method of shipment or packing of supplies.
  - (6) Place of delivery.
  - (7) Amount of GFP.
- (b) If any change causes an increase or decrease in any hourly rate, the ceiling price, or the time required for performance of any part of the work under this Contract, whether or not changed by the modification, or otherwise affects any other provision of this Contract, JPL shall make an equitable adjustment in the (i) ceiling price, (ii) hourly rates, (iii) delivery or performance schedule, and (iv) other affected provisions, and shall modify the Contract accordingly.
- (c) The Contractor must assert its right to an adjustment under this Article within 30 days from the date of receipt of the modification. However, if JPL decides that the facts justify it, JPL may receive and act upon a proposal submitted before final payment of the Contract.
- (d) Except as provided in paragraph (e) below, nothing contained in this Article shall excuse the Contractor from proceeding with the Contract as changed.

- (e) Notwithstanding the provisions of paragraphs (a) through (d) above, the ceiling price of this Contract shall not be increased or deemed to be increased except by specific written modification of the Contract indicating the new Contract ceiling price. Until such modification is made, the Contractor shall not be obligated to continue performance or incur costs beyond the point established in paragraph (f) or (g) of the Article of this Contract entitled "Timekeeping and Payments."

#### **ARTICLE GP-63. SUBCONTRACTS**

- (a) No subcontract shall be made by the Contractor for the furnishing of any of the work herein contracted for without the prior written consent or approval of JPL.
- (b) No subcontract placed under this Contract shall provide for payment on a cost-plus-a-percentage-of-cost basis, and any fee payable under cost-reimbursement subcontracts shall not exceed the fee limitations in FAR 16.301-4 and any corresponding implementing or supplementing provisions in the NFS.
- (c) Unless the consent or approval specifically provides otherwise, consent by JPL to any subcontract shall not constitute a determination (i) of the acceptability of any subcontract terms or conditions, (ii) of the acceptability of any subcontract price or of any amount paid under any subcontract, or (iii) to relieve the Contractor of any responsibility for performing this Contract.

#### **ARTICLE GP-64. GOVERNMENT PROPERTY**

- (a) JPL shall deliver to the Contractor, at the time stated in the Schedule or, if not so stated, in sufficient time to enable the Contractor to meet the delivery or performance schedule, the Government-owned property described as JPL-furnished property in the Schedule or specifications. If that property, suitable for its intended use, is not delivered to the Contractor, JPL shall equitably adjust affected provisions of this Contract in accordance with the Changes Article when:
  - (1) The Contractor submits a timely written request for an equitable adjustment; and
  - (2) The facts warrant an equitable adjustment.
- (b) Title to JPL-furnished property shall remain in the Government. The Contractor shall use the JPL-furnished property only in connection with this Contract. The Contractor shall maintain adequate property control records in accordance with sound industrial practice and will make such records available for JPL or Government inspection at all reasonable times.
- (c) Upon delivery of JPL-furnished property to the Contractor, the Contractor assumes the risk and responsibility for its loss or damage, except:
  - (1) For reasonable wear and tear;
  - (2) To the extent property is consumed in performing this Contract; or
  - (3) As otherwise provided for by the provisions of this Contract.
- (d) Upon completing this Contract, the Contractor shall follow the instructions of JPL regarding the disposition of all JPL-furnished property not consumed in performing this Contract or previously delivered to JPL. The Contractor shall prepare for shipment, deliver f.o.b. origin, or dispose of the Government property, as may be directed or authorized by JPL. The net proceeds of any such disposal shall be credited to the Contract price or shall be paid as directed by JPL.
- (e) If this Contract is to be performed outside the United States of America, its territories, or possessions, the words "Government" and "JPL-furnished" (wherever they appear in this Article) shall be construed as "United States Government" and "United States Government-owned/JPL-furnished," respectively.

#### ARTICLE GP-65. TIMEKEEPING AND PAYMENTS (LH/T&M)

(a) General. The Contractor shall submit invoices to JPL as indicated in the Schedule. Payment to the Contractor for hours worked by the Contractor employees listed in the Schedule (or Contract Work Order) (or if there is no listing of personnel by name in the Schedule, then by personnel of the classification listed in the Schedule) will be based on the actual hours worked by such personnel in accordance with paragraph (b) below. Reimbursement of the Contractor for travel and related expenses or allowances shall be allowable only if stated in the Schedule and shall be subject to the provisions below.

(b) Timekeeping.

(1) For work to be performed at a JPL location, the hours and days of the workweek and the hours of the workshift shall be approved by JPL. Unless otherwise provided in this Contract, all Contractor personnel shall manually record the hours worked each day on JPL-provided time cards, form JPL 1964-S. Working time will be calculated in tenth-of-an-hour increments for each full six minutes beginning with the designated or approved shift starting time or the actual starting time, whichever is later. Mealtime deductions shall be approved by JPL. Contractor personnel leaving JPL premises during the workday shall record the time out and, upon return, time in along with the reason for the absence.

(2) For work performed at a location other than JPL, the hours and days of the workweek and the hours of the work shift shall be approved by JPL. Unless otherwise provided for in this Contract, the Contractor shall maintain timekeeping records in accordance with form JPL 1725, "Minimum Timekeeping Requirements for Time-and-Material or Labor-Hour Type Procurements to be Performed at Off-Lab Facilities."

(3) Overtime is defined as work performed in excess of eight hours in one day or forty hours in one workweek.

(c) Hourly Rate.

(1) The amounts shall be computed by multiplying the appropriate hourly rates prescribed in the Schedule or Contract Work Order by the number of direct labor hours performed, as measured by the clock card (or by the JPL-approved alternate procedure) and approved by JPL. The rates shall include wages, indirect costs, general and administrative expense, and profit. Working time will be calculated in tenth-of-an-hour increments for each full six minutes beginning with the designated or approved shift starting time or the actual starting time, as measured by the clock card (or approved alternate procedure), whichever is later. Meal time deductions will be as approved by JPL. At the end of the day, working time will not be computed beyond the end of the designated approved shift unless overtime is authorized. Invoices may be submitted once each month (or at more frequent intervals, if approved by JPL) to the attention of the JPL Accounting Section. Promptly after receipt of each invoice, the Institute shall, except as otherwise provided in this Contract, and subject to the terms of (g) below, pay the invoice as approved by JPL.

(2) Unless otherwise prescribed in the Schedule, the Institute shall withhold five percent of the amounts due under this Contract, or such other amount which the Institute considers necessary to protect the interest of the Institute and the Government, but the total amount withheld shall not exceed \$50,000. The amounts withheld shall be retained until the execution and delivery of a release by the Contractor as provided in paragraph (h) below.

(3) Unless the Schedule prescribes otherwise, the hourly rates in the Schedule shall not be varied by virtue of the Contractor having performed work on an overtime basis. If the Schedule or Contract Work Order provides rates for overtime, the premium portion of those rates will be reimbursable only to the extent the overtime is approved by JPL.

(d) Materials, Subcontracts and Other Direct Costs.

(1) Allowable costs of direct materials or other direct costs authorized in the Schedule shall be determined by JPL in accordance with Subpart 31.2 of FAR in effect on the date of this contract and any corresponding implementing or supplementing provisions in the NFS. Reasonable and allocable material handling costs may be included in the charge for material to the extent they are clearly excluded from the hourly rate. Material handling costs are comprised of indirect costs, including, when appropriate, general and administrative expense allocated to direct materials and other direct costs in accordance with the Contractor's usual accounting practices consistent with Subpart 31.2 of FAR and any corresponding

implementing or supplementing provisions in the NFS. The Contractor shall be reimbursed for items and services purchased directly for the Contract only when cash, checks, or other forms of actual payment have been made for such purchased items or services. Direct materials, as used in this Article, are those materials which enter directly into the end product, or which are used or consumed directly in connection with the furnishing of the end product. The Contract shall support all material or other direct costs claimed by submitting copies of paid invoices or storeroom requisitions, or by other substantiation acceptable to JPL.

- (2) The cost of subcontracts that are authorized under the "Subcontracts" Article of this Contract shall be reimbursable costs under this Article; provided, that the costs are consistent with subparagraph (3) below. Reimbursable costs in connection with subcontracts shall be limited to the amounts paid to the subcontractor in the same manner as for items and services purchased directly for the Contract under subparagraph (1) above; however, this requirement shall not apply to a Contractor that is a small business concern. Reimbursable costs shall not include any costs arising from the letting, administration or supervision of performance of the subcontract, if the costs are included in the hourly rates payable under (c)(1) above.
- (3) To the extent able, the Contractor shall:
  - (A) Obtain materials or other direct cost items at the most advantageous prices available with due regard to securing prompt delivery of satisfactory materials; and
  - (B) Take all cash and trade discounts, rebates, allowances, credits, salvage, commissions, and other benefits. When unable to take advantage of the benefits, the Contractor shall promptly notify JPL and give the reason. Credit shall be given to the Institute for cash and trade discounts, rebates, allowances, credits, salvage, the value of any appreciable scrap, commissions, and other amounts that have accrued to the benefit of the Contractor, or would have accrued except for the fault or neglect of the Contractor. The benefits lost without fault or neglect on the part of the Contractor, or lost through fault of JPL, shall not be deducted from gross costs.
- (4) If the nature of the work to be performed requires the Contractor to furnish material which is regularly sold to the general public in the normal course of business by the Contractor, the price to be paid for such material, notwithstanding (d)(1) above, shall be on the basis of an established catalog or list price, in effect when the material is furnished, less all applicable discounts to the Institute or the Government; provided, that in no event shall such price be in excess of the Contractor's sales price to its most favored customer for the same item in like quantity, or the current market price, whichever is lower.
- (e) Total Cost. It is estimated that the total cost to the Institute for the performance of this Contract shall not exceed the ceiling price set forth in the Schedule and the Contractor agrees to use its best efforts to perform the work specified in the Schedule and all obligations under this Contract within such ceiling price. If at any time the Contractor has reason to believe that the hourly rate payments and material or other direct costs that will accrue in performing this Contract in the next succeeding 30 days, if added to all other payments and costs previously accrued, will exceed 75% of the ceiling price in the Schedule, the Contractor shall notify JPL, giving a revised estimate of the total price to the Institute for performing this Contract with supporting reasons and documentation. If at any time during performance of this Contract, the Contractor has reason to believe that the total price to the Institute for performing this Contract will be substantially greater or less than the then stated ceiling price, the Contractor shall so notify JPL, giving a revised estimate of the total price for performing this Contract, with supporting reasons and documentation. If at any time during performance of this Contract, the Institute has reason to believe that the work to be required in performing this Contract will be substantially greater or less than the stated ceiling price, JPL will so advise the Contractor, giving the then revised estimate of the total amount of effort to be required under the Contract.
- (f) Ceiling Price. The Institute shall not be obligated to pay the Contractor any amount in excess of the ceiling price in the Schedule, and the Contractor shall not be obligated to continue performance if to do so would exceed the ceiling price set forth in the Schedule, unless and until JPL shall have notified the Contractor in writing that the ceiling price has been increased and shall have specified in the notice a revised ceiling that shall constitute the ceiling price for performance under this Contract. When and to the extent that the ceiling price set forth in the Schedule has been increased, any hours expended and material costs incurred by the Contractor in excess of the ceiling price before the increase shall be allowable to the same extent as if the

hours expended and material or other direct costs had been incurred after the increase in the ceiling price. Directions, orders, notices, requests and the like issued by JPL pursuant to the "Changes" Article or any other provision of this Contract shall not be considered an authorization to the Contractor to exceed the ceiling price set forth in the Schedule in the absence of a statement in a Unilateral Modification, or other Contract modification, increasing the ceiling price.

- (g) Audit. At any time before final payment under this Contract, JPL may audit or have audited the invoices or vouchers and substantiating material. Each payment previously made shall be subject to reduction to the extent of amounts, on preceding invoices or vouchers, that are found by JPL not to have been properly payable and shall also be subject to reduction for overpayments or to increase for underpayments. Upon receipt and approval of the voucher or invoice designated by the Contractor as the "completion voucher" or "completion invoice" and substantiating material, and upon compliance by the Contractor with all terms of this Contract (including, without limitation, terms relating to patents and terms of (h) and (i) below), the Institute shall promptly pay any balance due the Contractor. The completion invoice or voucher, and substantiating material, shall be submitted by the Contractor as promptly as practicable following completion of the work under this Contract, but in no event later than six months (or such longer period as JPL may approve in writing) from the date of completion.
- (h) Release. The Contractor, and each assignee under an assignment entered into under this Contract and in effect at the time of final payment under this contract, shall execute and deliver, at the time of and as a condition precedent to final payment under this Contract, a release discharging the Institute, its officers, agents, and employees of and from all liabilities, obligations, and claims arising out of or under this Contract, subject only to the following exceptions:
  - (1) Specified claims in stated amounts, or in estimated amounts if the amounts are not susceptible of exact statement by the Contractor.
  - (2) Claims, together with reasonable incidental expenses, based upon the liabilities of the Contractor to third parties arising out of performing this Contract, that are not known to the Contractor on the date of the execution of the release, and of which the Contractor gives notice in writing to JPL not more than six years after the date of the release or the date of any notice to the Contractor that the Institute is prepared to make final payment, whichever is earlier.
  - (3) Claims for reimbursement of costs (other than expenses of the Contractor by reason of its indemnification of the Institute or the Government against patent liability), including reasonable incidental expenses, incurred by the Contractor under the terms of this Contract relating to patents.
- (i) Refunds. The Contractor agrees that any refunds, rebates, or credits (including any related interest) accruing to or received by the Contractor or any assignee, that arise under the materials or other direct costs portion of this Contract and for which the Contractor has received reimbursement, shall be paid by the Contractor to the Institute. The Contractor and each assignee, under an assignment entered into under this Contract and in effect at the time of final payment under this Contract, shall execute and deliver, at the time of and as a condition precedent to final payment under this Contract, an assignment to the Institute of such refunds, rebates, or credits (including any interest) in form and substance satisfactory to JPL.

#### **ARTICLE GP-66. INSURANCE AND INDEMNIFICATION**

(This Article is applicable if the Contract amount exceeds the small purchase limit in FAR Part 13 and if this Contract requires work on a Government installation or premises under the control of the Institute, unless (i) only a small amount of work is required on the Government installation or Institute-controlled premises; or (ii) all such work is to be performed outside the United States, its possessions, or Puerto Rico.)

- (a) Insurance. The Contractor shall, at its own expense, provide and maintain during the entire performance period of this Contract at least the following kinds and minimum amounts of insurance with the Institute named as an additional named insured in policies for comprehensive general liability insurance with a carrier licensed and admitted in the State of California.



- (1) Workers' Compensation and Employer's Liability Insurance, as required by applicable Federal and state workers' compensation and occupational disease statutes. If occupational diseases are not compensable under those statutes, they shall be covered under the Employer's Liability section of the insurance policy, except when Contract operations are so commingled with the Contractor's commercial operations that it would not be practical. The Employer's Liability coverage shall be at least \$100,000, except in states with exclusive or monopolistic funds that do not permit worker's compensation to be written by private carriers. However, the Contractor in fulfillment of its obligation to provide Workers' Compensation Insurance may maintain a self-insurance program if the Contractor is qualified pursuant to statutory authority to do so.
  - (2) Comprehensive Liability Insurance, including automobiles (owned, non-owned, or leased), completed operations, products, and contractual liability, for a combined single limit of not less than \$1,000,000 for all deaths, injuries, and property damage arising from one accident or occurrence.
- (b) Insurance Certificates and Endorsements. Before commencing work under this Contract, the Contractor shall furnish (i) certificates of insurance for the coverages specified in (a) above, and (ii) an additional insured endorsement naming the Institute as an additional insured to the contract for the coverage specified in (a)(2) above. Such certificates and the endorsement shall provide that any cancellation or material change in the insurance policies shall not be effective (i) for such period as the laws of the State in which this Contract is to be performed prescribe, or (ii) until 30 days after the insurer or the Contractor gives written notice to JPL, whichever period is longer. Also, such certificates and the endorsement shall (i) cover contractual liability assumed under this Contract, and (ii) be primary and non-contributing to any insurance procured by the Institute. The Contractor agrees to permit the Institute to examine its original policies, should the Institute so request. Should the Contractor at any time neglect or refuse to provide the insurance required herein, or should such insurance be canceled, the Institute shall have the right to procure same and the costs thereof shall be deducted from monies then due or thereafter to become due to the Contractor.
- (c) Indemnification. The Contractor agrees that it will be responsible to the Government and the Institute for, and will indemnify and hold harmless the Government and the Institute, its trustees, officers, and employees, from any loss, cost, damage, expense or liability, attorney's fees, or any suit therefor, by reason of actual or alleged property damage or personal injury of whatsoever kind or character, arising out of or in connection with the performance of work hereunder by the Contractor or any of its subcontractors, howsoever the same may be caused, including any of the same resulting from alleged or actual negligent act or omission, regardless of whether such act or omission is active or passive, but excepting only such loss, cost, damage, expense or liability attributable to the sole negligence or willful misconduct of the Government or of the Institute, its trustees, officers or employees.
- (d) Subcontracts. The Contractor shall insert the substance of this Article, including this paragraph (d), in subcontracts under this Contract which exceed the small purchase limit in FAR Part 13 if the subcontract requires work on a Government installation or premises under the control of the Institute, unless (i) only a small amount of work is required on the Government installation or Institute-controlled premises; or (ii) all such work is to be performed outside the United States, its possessions, or Puerto Rico, modified as necessary to correctly identify the parties. At least five days before entry of each such subcontractor's personnel on the Government installation or Institute-controlled premises, the Contractor shall furnish (or ensure that there has been furnished) to JPL a current certificate of insurance meeting the requirements of paragraph (b) above, for each such subcontractor.

#### **ARTICLE GP-67. COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT**

- (a) Contractor agrees to comply with the Americans with Disabilities Act (42 U.S.C. 12101, et. seq.) and all implementing regulations.
- (b) Contractor agrees that it will be responsible to the Government and the Institute for, and will indemnify and hold harmless the Government and the Institute, its trustees, officers, and employees from any loss, cost, damage, expense or liability or suit therefor, by reason of actual or alleged property damage or personal injury of whatever kind or character, arising out of, or in connection with performance of the requirements of paragraph (a) above by the Contractor or any of its subcontractors, however the same may be caused, excepting only such loss, cost, damage, expense or liability attributable to the sole or contributory active negligence of the Government or of the Institute, its trustees, officers, or employees.



(c) Contractor agrees to insert this Article, including (c), in all subcontracts and purchase orders hereunder.

#### **ARTICLE GP-68. SELECTION OF PERSONNEL**

If Contractor personnel are not listed by name in the Schedule, the Contractor shall be responsible for selecting personnel who are well qualified to perform in the classifications listed, subject, however, to the initial and continuing approval of JPL.

#### **ARTICLE GP-69. TERMINATION**

(a) JPL may terminate performance of work under this Contract in whole or, from time to time, in part, if:

- (1) JPL determines that a termination is in the interest of the Institute or the Government.
- (2) The Contractor defaults in performing this Contract and fails to cure the default within 10 days (unless extended by JPL) after receiving a JPL notice specifying the default. "Default" includes failure to make progress in the work so as to endanger performance.

(b) JPL shall terminate by delivering to the Contractor a Notice of Termination specifying whether termination is for default of the Contractor or for convenience of the Institute or the Government, the extent of termination, and the effective date. If, after termination for default, it is determined that the Contractor was not in default or that the Contractor's failure to perform or to make progress in performance is due to causes beyond the control and without the fault or negligence of the Contractor as set forth in the Article of this Contract entitled "Excusable Delays," the rights and obligations of the parties will be the same as if the termination was for the convenience of the Institute or the Government.

(c) After receipt of a Notice of Termination, and except as directed by JPL, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this Article:

- (1) Stop work as specified in the notice.
- (2) Place no further subcontracts or orders (referred to as subcontracts in this Article), except as necessary to complete the continued portion of the Contract.
- (3) Terminate all subcontracts to the extent they relate to the work terminated.
- (4) Assign to JPL, in the manner and to the extent directed by JPL, all right, title, and interest of the Contractor under the subcontracts terminated, in which case JPL shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.
- (5) With approval or ratification to the extent required by JPL, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts, the cost of which would be reimbursable in whole or in part, under this Contract; approval or ratification will be final for purposes of this Article.
- (6) Submit in a form acceptable to JPL inventory schedules covering all items of property not consumed in the performance of this Contract or not previously delivered to JPL.
- (7) Transfer title (if not already transferred) and, as directed by JPL, deliver to JPL (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated, (ii) the completed or partially completed plans, drawings, information, and other property that, if the Contract had been completed, would be required to be furnished to JPL, and (iii) the jigs, dies, fixtures, and other special tools and tooling acquired or manufactured for this Contract, the cost of which the Contractor has been or will be reimbursed under this Contract.
- (8) Complete performance of the work not terminated.
- (9) Take any action that may be necessary, or that JPL may direct, for the protection and preservation of the property related to this Contract that is in the possession of the Contractor and in which the Government has or may acquire an interest.

- (10) Use its best efforts to sell, as directed or authorized by JPL, any property of the types referred to in subparagraph (7) above; provided, however, that the Contractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, JPL. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Institute under this Contract, credited to the price or cost of the work, or paid in any other manner directed by JPL.
- (d) After expiration of the plant clearance period as defined in Subpart 45.6 of FAR and any corresponding implementing or supplementing provisions in the NFS, the Contractor may submit to JPL a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by JPL. The Contractor may request JPL to remove those items or enter into an agreement for their storage. Within 15 days, JPL will accept the items and remove them or enter into a storage agreement. JPL may verify the list upon removal of the items, or if stored, within 45 days from submission of the list, and shall correct the list, as necessary, before final settlement.
- (e) After termination, the Contractor shall submit a final termination settlement proposal to JPL in the form and with the certification prescribed by JPL. The Contractor shall submit the proposal promptly, but no later than six months from the effective date of termination, unless extended in writing by JPL upon written request of the Contractor within this six- month period. However, if JPL determines that the facts justify it, a termination settlement proposal may be received and acted on after six months or any extension. If the Contractor fails to submit the proposal within the time allowed, JPL may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay the amount determined.
- (f) Subject to paragraph (e) above, the Contractor and JPL may agree on the whole or any part of the amount to be paid (including an allowance for fee) because of the termination. The Contract shall be amended, and the Contractor paid the agreed amount.
- (g) If the Contractor and JPL fail to agree in whole or in part on the amount to be paid because of the termination of work, JPL shall determine, on the basis of information available, the amount, if any, due the Contractor, and shall pay the amount determined as follows:
- (1) If the termination is for the convenience of the Institute, include:
- (A) An amount for direct labor hours (as defined in the Schedule of the Contract) determined by multiplying the number of direct labor hours expended before the effective date of termination by the hourly rate(s) in the Schedule, less any hourly rate payments already made to the Contractor;
- (B) An amount (computed under the provisions for payment of materials or other direct costs) for material expenses or other direct costs incurred before the effective date of termination, not previously paid to the Contractor;
- (C) An amount for labor and material expenses and other direct costs computed as if the expenses were incurred before the effective date of termination if they are reasonably incurred after the effective date, with the approval of or as directed by JPL; however, the Contractor shall discontinue these expenses as rapidly as practicable;
- (D) If not included in (A), (B), or (C) above, the cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the Contract; and
- (E) The reasonable costs of settlement of the work terminated, including:
- (i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;
- (ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and
- (iii) Storage, transportation, and other costs incurred, reasonably necessary for the protection or disposition of the termination inventory.

- (2) If the termination is for default of the Contractor, include the amounts computed under (1) above but omit:
- (A) Any amount for preparation of the Contractor's termination settlement proposal; and
  - (B) The portion of the hourly rate allocable to profit for any direct labor hours expended in furnishing materials and services not delivered to and accepted by JPL.
- (h) The cost principles and procedures in Part 31 of the FAR and any corresponding implementing or supplementing provisions in the NFS, in effect on the date of this Contract, shall govern all costs claimed, agreed to, or determined under this Article.
- (i) The determination by JPL of the amount, if any, due the Contractor by reason of the termination of this Contract, as provided in paragraphs (e) or (g) above or paragraph (k) below of this Article, shall not be final and conclusive with regard to the Contractor's right to pursue any available legal remedy in the event the Contractor disagrees with such determination, provided that, if the Contractor has failed to submit its claim within the time provided in paragraph (e) above, and has failed to request an extension of such time, the determination of JPL as to the amount due shall be final and conclusive.
- (j) In arriving at the amount due the Contractor under this Article, there shall be deducted:
- (1) All unliquidated advance or other payments to the Contractor, under the terminated portion of this Contract;
  - (2) Any claim which the Institute has against the Contractor under this Contract; and
  - (3) The agreed price for, or the proceeds of sale of materials, supplies, or other things acquired by the Contractor or sold under this Article and not recovered by or credited to the Institute.
- (k) If the termination is partial, the Contractor may file with the Institute a proposal for an equitable adjustment of the price(s) for the continued portion of the Contract. The Institute shall make any equitable adjustment agreed upon. Any proposal by the Contractor for an equitable adjustment under this Article shall be requested within 90 days from the effective date of termination, unless extended in writing by JPL.
- (l) (1) The Institute may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Contractor for the terminated portion of the Contract, if the Institute believes the total of these payments will not exceed the amount to which the Contractor will be entitled.
- (2) If the total payments exceed the amount finally determined to be due, the Contractor shall repay the excess to the Institute upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the Contractor to the date the excess is repaid to the Institute. Interest shall not be charged on any excess payment due to a reduction in the Contractor's termination settlement proposal because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by the Institute because of the circumstances.

#### **ARTICLE GP-70. LIMITATION ON WITHHOLDING OF PAYMENTS**

If more than one Article of this Contract authorizes the temporary withholding of amounts otherwise payable to the Contractor for supplies delivered or services performed, the total of the amounts withheld at any one time shall not exceed the greatest amount that may be withheld under any one Article at that time; provided, that this limitation shall not apply to:

- (a) Withholdings pursuant to any Article relating to wages or hours of employees;
- (b) Withholdings not specifically provided for by this Contract; and
- (c) The recovery of overpayments.

#### **ARTICLE GP-71. FEDERAL, STATE, AND LOCAL TAXES**

The rates, and any other amounts reimbursable under this Contract, include all Federal, State, and local taxes determined to be allowable under FAR 31.2 and any corresponding implementing or supplementing provisions in the NFS.

#### **ARTICLE GP-72. REMOVAL OR REPLACEMENT OF PERSONNEL**

JPL may at any time direct the Contractor to remove or replace personnel from the performance of the work hereunder and the Contractor shall forthwith comply with such direction. Any replacement shall be subject to the approval of JPL and, if Contractor personnel are listed by name in the Schedule, the name and classification and rate or rates per hour shall be added to this Contract by Supplemental Agreement.

#### **ARTICLE GP-73. (RESERVED)**

#### **ARTICLE GP-74. (RESERVED)**

#### **ARTICLE GP-75. EXCUSABLE DELAYS**

- (a) Except for defaults of subcontractors at any tier, the Contractor shall not be in default because of any failure to perform this Contract under its terms if the failure arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of these are (i) acts of God or of the public enemy, (ii) acts of the Government in either its sovereign or contractual capacity, (iii) fires, (iv) floods, (v) epidemics, (vi) quarantine restrictions, (vii) strikes, (viii) freight embargoes, and (ix) unusually severe weather. In each instance, the failure to perform must be beyond the control and without the fault or negligence of the Contractor. "Default" includes failure to make progress in the work so as to endanger performance.
- (b) If the failure to perform is caused by the failure of a subcontractor at any tier to perform or make progress, and if the cause of the failure was beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be deemed to be in default, unless:
  - (1) The subcontracted supplies or services were obtainable from other sources;
  - (2) JPL ordered the Contractor in writing to purchase these supplies or services from the other source; and
  - (3) The Contractor failed to comply reasonably with this order.
- (c) Upon request of the Contractor, JPL shall ascertain the facts and extent of the failure. If JPL determines that any failure to perform results from one or more of the causes above, the delivery schedule shall be revised, subject to the rights of the Institute under the "Termination" Article of this Contract.

#### **ARTICLE GP-76. EQUIPMENT (EXCLUDING VEHICLES), TOOLS AND MATERIAL (CONTRACTOR PERSONNEL IN RESIDENCE AT JPL)**

(This Article applies if the Contract work will be performed at a JPL-controlled facility, and tools, equipment, or materials will be issued to the Contractor's personnel by JPL.)

- (a) Contractor personnel will not bring work Items, i.e., tools, equipment (for example, personal computers and printers), or material, upon the premises while working at a JPL-controlled facility. JPL will provide those Items necessary for performance of work at a JPL-controlled facility, and such Items shall not be removed from the premises unless removal from JPL premises is specifically authorized by the JPL Supply and Equipment Section Manager or designated representative. Items so provided shall not be considered "Government-Furnished Property," and will not be subject to the "Government Property" Article of this Contract, but will be issued to individual Contractor personnel. Contractor personnel will be held to the same standards of conduct regarding such Items as JPL employees, that is:
  - (1) Contractor personnel shall promptly notify their supervisor or the Cognizant JPL Technical Representative of any loss, damage, or destruction of Items issued to them.

- (2) The Contractor will be held liable for any loss, damage, or destruction of such Items resulting from gross negligence, willful misconduct, unlawful appropriation by its personnel for personal use or benefit, or use for other than JPL business on the part of its personnel.
- (b) The Contractor agrees to inform its personnel who may work at a JPL- controlled facility of this procedure and of their responsibilities. JPL will advise the Contractor promptly upon determining that any Contractor personnel has failed to return or satisfactorily account for any Item issued to such personnel. The Contractor agrees that JPL may withhold from any monies due or to become due the Contractor under this Contract, or to otherwise reimburse JPL, the value of any Items issued to Contractor personnel and neither returned nor satisfactorily accounted for upon completion of work under this Contract or when so requested by JPL.

**ARTICLE GP-77. FELONY CONVICTION INFORMATION (CONTRACTOR PERSONNEL IN RESIDENCE AT JPL)**

(This Article applies to contracts/subcontracts when contractor- and/or subcontractor-furnished personnel will be performing work in residence at JPL- controlled facilities.)

When access to JPL facilities is required by Contractor personnel, the Contractor shall provide JPL-requested personnel access information, including a Contractor Personnel Access Request (form JPL 1943), attached hereto, executed by the Contractor and the person requiring access. This request shall be provided to the JPL Plant Protection Office at least 24 hours prior to the time access is required to JPL premises. JPL reserves the right to approve or deny access to its facilities, based on the response given on form JPL 1943 or on other information available to JPL.

**ARTICLE GP-78. (RESERVED)**

**ARTICLE GP-79. (RESERVED)**

**ARTICLE GP-80. (RESERVED)**



**Jet Propulsion Laboratory**  
California Institute of Technology  
4800 Oak Grove Drive  
Pasadena, California 91109-8099  
(818) 354-4321

**CONTRACTOR PERSONNEL ACCESS REQUEST**  
(Mail to Attention of: JPL Plant Protection Office, Building 180, Room 103)

Before a JPL badge is issued to contractor personnel for access to JPL facilities, this form must be completed by the contractor and the person requiring access and provided to the JPL Plant Protection Office. To allow for security processing, this form must be submitted at least 24 hours before the required access to JPL premises by the contractor personnel.

1. Have you ever been convicted of a felony?  
☐ Yes   ☐ No
  
2. Have you ever been convicted of a misdemeanor which resulted in imprisonment?  
☐ Yes   ☐ No
  
3. If you answered "Yes" to any of the above questions, please state the date, place and circumstances.  
A conviction will not necessarily disqualify you from access to JPL premises. If you need additional space, please attach another sheet of paper.

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I certify that answers given herein are true and complete to the best of my knowledge, and I authorize investigation of all statements contained herein. I understand that misrepresentation or omission of facts could result in withdrawal or denial of access to JPL.

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Date Signed

---

Contractor Personnel Signature

---

Required Access Date

---

Typed/Printed Name

---

Contract No.

---

Contracting Company

By: \_\_\_\_\_



---

Typed Name

Phone No.

**MINIMUM TIMEKEEPING REQUIREMENTS FOR  
LABOR-HOUR TYPE PROCUREMENTS  
TO BE PERFORMED AT OFF-LAB FACILITIES**

- A. For individuals operating as independent contractors with no employees and no plans to hire employees, and where the subject JPL Contract is the individual's only contract, the Contractor must maintain a weekly record of time expended in performance of the JPL Contract.
- B. For individuals with more than one contract, or contractors who have employees or who are contemplating hiring employees, the following payroll practices apply:
  - 1. Maintain records in compliance with 29 CFR 516.2(a), (b), and (c). (See page 2 of this form.)
  - 2. Maintain accountability for withholding and payment of all legally required payroll-related liabilities.
  - 3. Maintain an internal control system that protects the integrity of the payroll system.
  - 4. Maintain an accounting system that has the capability to segregate labor hours and resultant costs by contract and by job or work order when appropriate.
  - 5. In accordance with terms of the Article entitled "Timekeeping and Payments" (paragraph (g)) and the Article entitled "Audit and Examination of Records - Negotiation," JPL may make or cause to be made an audit of any or all of the above-described records.
- C. The above practices do not apply to consultants or second-tier independent contract labor services procured by contractors. Consultants and second-tier independent contractors are not considered to be employees of the Contractor. If the Contract authorizes such services, these charges must be clearly defined on invoices as consultant, subcontractor, or other direct charges and not as employees. This distinction must be made on all other applicable Contract and Contract-related documents as well.
- D. By acceptance of this Contract, the Contractor certifies that its timekeeping practices meet JPL requirements.

## **29 CFR 516.2**

Employees subject to minimum wage or minimum and overtime provisions pursuant to section 6 or sections 6 and 7(a) of the Fair Labor Standards Act, hereafter referred to as the Act.

(a) **Items Required.** Every employer shall maintain and preserve payroll or other records containing the following information and data with respect to each and every employee to whom section 6 or both sections 6 and 7(a) of the Act apply:

- (1) Name in full, as used for Social Security recordkeeping purposes, and on the same record, the employee's identifying symbol or number if such is used in place of name on any time, work, or payroll records.
- (2) Home address, including zip code.
- (3) Date of birth, if under 19.
- (4) Sex and occupation in which employed (sex may be indicated by use of the prefixes Mr., Mrs., Miss, or Ms.). (Employee's sex identification is related to the equal pay provisions of the Act which are administered by the Equal Employment Opportunity Commission. Other equal pay recordkeeping requirements are contained in 29 CFR Part 1620.)
- (5) Time of day and day of week on which the employee's workweek begins (or for employees employed under section 7(k) of the Act, the starting time and length of each employee's work period). If the employee is part of a work force or employed in or by an establishment all of whose workers have a workweek beginning at the same time on the same day, a single notation of the time of the day and beginning day of the workweek for the whole workforce or establishment will suffice.
- (6)
  - (i) Regular hourly rate of pay for any workweek in which overtime compensation is due under section 7(a) of the Act;
  - (ii) Explain basis of pay by indicating the monetary amount paid on a per hour, per day, per week, per piece, commission on sales, or other basis; and
  - (iii) The amount and nature of each payment which, pursuant to section 7(e) of the Act, is excluded from the "regular rate" (these records may be in the form of vouchers or other payment data).
- (7) Hours worked each workday and total hours worked each workweek (for purposes of this section, a "workday" is any fixed period of 24 consecutive hours, and a "workweek" is any fixed and regularly recurring period of seven consecutive workdays).
- (8) Total daily or weekly straight-time earnings or wages due for hours worked during the workday or workweek, exclusive of premium overtime compensation.
- (9) Total premium pay for overtime hours. This amount excludes the straight-time earnings for overtime hours recorded under paragraph (a)(8) of this section.
- (10) Total additions to or deductions from wages paid each pay period, including employee purchase orders or wage assignments. Also, in individual employee records, the dates, amounts, and nature of the items which make up the total additions and deductions.
- (11) Total wages paid each pay period.
- (12) Date of payment and the pay period covered by payment.

(b) **Records of Retroactive Payment of Wages.** Every employer who makes retroactive payment of wages or compensation under the supervision of the Administrator of the Wage and Hour Division pursuant to section 16(c) and/or section 17 of the Act shall:

- (1) Record and preserve, as an entry on the pay records, the amount of such payment to each employee, the period covered by such payment, and the date of payment.
- (2) Prepare a report of each such payment on a receipt form provided by or authorized by the Wage and Hour division, and:
  - (i) Preserve a copy as part of the records;
  - (ii) Deliver a copy to the employee; and
  - (iii) File the original, as evidence of payment by the employer and receipt by the employee, with the Administrator or an authorized representative within 10 days after payment is made.

- (c) Employees Working on Fixed Schedules. With respect to employees working on fixed schedules, an employer may maintain records showing instead of the hours worked each day and each workweek as required by paragraph (a)(7) of this section, the schedule of daily and weekly hours the employee normally works. Also:
- (1) In weeks in which an employee adheres to this schedule, indicates by check mark, statement, or other method that such hours were in fact actually worked by him; and
  - (2) In weeks in which more or less than the scheduled hours are worked, shows that exact number of hours worked each day and each week.